U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31654369

Date: JUL. 10, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a pharmaceutical industrial production manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. Our precedent decision in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner proposes to work as a pharmaceutical industrial production manager, where he will plan, direct, and coordinate work activities and resources necessary for the manufacture of pharmaceutical products. In his personal statement, he claims he will make production resilient and implement a risk mitigation strategy to (1) ensure the adequate supply of safe, effective, and quality medicines through strengthening the supply chain, and (2) anticipate drug shortages.

The Director concluded that the Petitioner's endeavor has substantial merit but not national importance under *Dhanasar's* first prong.[2] On appeal, the Petitioner asserts that he submitted sufficient evidence to demonstrate his proposed endeavor's national importance and claims the Director summarily denied his petition without any articulated, specific reasoning. In particular, he contends, among other things, that the Director erred in finding the Petitioner did not demonstrate his endeavor's significant potential for positive economic effects and job creation, and that the Director overreached by attempting to introduce a novel interpretation of *Dhanasar*.

Upon de novo review, we conclude the Petitioner's proposed endeavor has substantial merit. However, for the reasons discussed below, we agree with the Director's determination that the Petitioner has not demonstrated his proposed endeavor's national importance and, thus, has not shown that he satisfies *Dhanasar's* first prong.[3]

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id*. at 889-90.

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[2] The Petitioner claims he satisfied *Dhanasar's* second prong because the Director did not object to or address this issue in her decision. This is incorrect. The Director concluded that the Petitioner had not established eligibility under *Dhanasar's* first prong, which was dispositive. Therefore, it was unnecessary for her to reach the remaining two prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach."); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

[3] While we do not discuss every piece of evidence individually, we have reviewed and considered the whole record.

Here, the Petitioner has not offered sufficient evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In support of his claim, the Petitioner emphasizes the importance of the pharmaceutical industry and submitted various articles and reports, including documents generally discussing the industry, drug shortages, and various government initiatives to strengthen the supply chain. However, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, the focus is on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. In this case, the articles and reports provide only general background information on these industries and fields and do not specifically relate to or discuss the Petitioner's proposed endeavor, including how his endeavor might impact these areas more broadly, such that it rises to the level of national importance. Merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

The Petitioner also has not adequately supported his assertions that his proposed endeavor has broader implications. Specifically, the Petitioner claims in his updated personal statement that his "ability to prevent supply shortages in pharmaceuticals is directly and tangibly related to ongoing pharmaceutical drug shortages nationwide." He contends that his endeavor is geared towards solving two of the major causes of drug shortages—manufacturing contamination and quality issues, as well as misallocation of pharmaceutical product distribution. The Petitioner, however, does not adequately detail how providing his services as a pharmaceutical industrial production manager for one company would have such broader impact in the industry that it rises to the level of national importance.

For instance, while he asserts in his updated personal statement that his undertaking will prevent "significant harm to consumers who cannot access the medications they require," he also states that "supply chain issues are rarely limited to a single geographic area or a single manufacturer." He does not explain how his future activities for a single manufacturer would sufficiently extend beyond his immediate employer and its clients to impact the business, healthcare, or pharmaceutical industries more broadly. Aside from his vague assertions that his endeavor has a "significant potential" to alleviate disruptions causing drug shortages in the United States, he does not elaborate how his proposed endeavor specifically will address this issue and have such broader impact in the industry that it would rise to the level of national importance.

The Petitioner also has not shown that his proposed endeavor has a significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. The Petitioner has not offered sufficient, specific evidence regarding any projected U.S. economic impact directly attributable to his future work. For example, the Petitioner contends that his employer tasked him with managing the company's new production facility in Brazil. He claims this increase in production capacity will directly lead to the creation of jobs and have other ripple effects including a decrease in unemployment, an increase in payroll taxes to the government, and an increase in workers who will pay taxes and consume more goods in the market. However, as noted in the Director's decision, the evidence indicates that the facility will be located in Brazil, not the United States. As such, the claimed economic benefits associated with this facility do not sufficiently demonstrate the endeavor's regional or national impacts in the United States, but rather, as acknowledged by the Petitioner, it demonstrates benefits to "the broader national *Brazilian* economy" (emphasis added). Additionally, to the extent the Petitioner asserts his work with this facility illustrates his ability to provide similar direct positive economic benefits to the United States, the Petitioner's skills, knowledge, and record of successes are

considerations under *Dhanasar's* second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. When conducting an analysis under *Dhanasar's* first prong, as we are doing here, we look to the proposed endeavor itself. *Id.* at 889.

However, even if we were to consider the Petitioner's claims of alleged job creation and tax revenue, we would still conclude that he has not adequately explained how his endeavor plays more than an indirect, tangential role in producing such claimed economic benefits, particularly where his employer is responsible for building the factory, hiring any employees, and paying any associated taxes. Any basic business activity has the potential to positively impact the economy. However, the Petitioner has not adequately shown how working as a single pharmaceutical industrial production manager for an individual employer—the specific endeavor proposed here—generates such significant economic activity that it rises to the level of "substantial positive economic effects" as contemplated by *Dhanasar*.

Without adequate evidence demonstrating any specific U.S. economic impact, job creation, or other significant economic activity directly attributable to his future work, the Petitioner's claims that his endeavor will provide substantial, direct positive economic effects is unpersuasive. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner's references to abstract tax revenue, job creation, and other unspecified economic benefits rely on more generalizations about the results of typical business activity, rather than providing probative information about what the Petitioner plans to accomplish through the endeavor and how it may have national importance.

The Petitioner also claims he will train new employees at his company in pharmaceutical industrial production, which will result in a "multiplier effect both in terms of job creation and substantive economic effects." In addition, he contends his training will help fill "critical shortages" within his industry. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. Similarly, in this case, the Petitioner has not sufficiently explained how his training activities at one company would extend beyond his employer and the employees that he will train to impact the pharmaceutical field, healthcare industry, or the U.S. economy more broadly at a level commensurate with national importance. Furthermore, although the Petitioner argues the shortage of industrial production managers "endangers the health and safety of Americans," the record contains insufficient evidence that the proposed endeavor stands to impact or significantly reduce this claimed shortage. We also note that shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner's reliance on his "proven experience" and "25 years of knowledge and experience" to illustrate his proposed endeavor's potential prospective impact is also misplaced. In support of his claim, the Petitioner submitted an expert opinion letter written by a professor at [redacted] and reference letters written by former work colleagues to demonstrate the national importance of his endeavor. However, as noted above, the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar's* second prong. *Id.* at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of the proposed endeavor itself.

Further, while the professor's letter makes sweeping claims that the Petitioner's endeavor would have a significant national impact, stimulate economic growth, and positively influence individual and societal well-being, the letter does not offer specific details on how the Petitioner's endeavor would accomplish these goals or how any impact would extend beyond the direct companies and clients that the Petitioner will serve. For example, the opinion letter claims the endeavor will have a national or even global impact on the pharmaceutical industry. However, instead of explaining how the proposed endeavor is tied to these alleged national or global impacts, the letter focuses on the general issue of patient access to medications, the typical duties of an industrial production manager in the production and manufacturing process, the educational background requirements of the position, and employment growth statistics in this sector. Similarly, the letter claims the proposed endeavor will have substantial positive economic effects and "contribute greatly to the U.S. economy." But rather than elaborating on the Petitioner's proposed endeavor and how it, specifically, will result in such effects, the opinion letter largely discusses the economic significance of the manufacturing and industrial production fields in general, the number of individuals employed in the sector, and statistics on prescription drug expenditure. Consequently, the opinion letter does not provide sufficient corroborating evidence to support the endeavor's alleged broader impacts to the industry or nation.

Likewise, while the letters of support from the Petitioner's former work colleagues praise the Petitioner's performance in his past roles, personal attributes, expertise, and past contributions to his workplace, these are considerations under *Dhanasar's* second prong. The letters lack detail regarding the Petitioner's proposed endeavor and its specific impact thereof, including discussion of any potential broader implications of his future work. Without more, the expert opinion and other support letters provide little probative evidence of the Petitioner's eligibility under *Dhanasar's* first prong.

We note that the support letters mention the Petitioner's past contributions to his employer's company, including improvements to the manufacturing process. The Petitioner asserts on appeal that the Director did not give due consideration to these "innovations," which he claims have "greatly improved efficiency and productivity for the Brazilian pharmaceutical industry." He also argues that the Director attempted to introduce a "novel interpretation of *Dhanasar*" regarding improved manufacturing processes and "arbitrarily" imposed a need for different or improved processes than those already available in the United States.

First, while we acknowledge the Petitioner's claims regarding the benefits of these processes, evidence related to the Petitioner's past contributions to his employer and the Brazilian pharmaceutical industry speak to whether the Petitioner is well-positioned to advance his proposed endeavor under *Dhanasar's* second prong and is not probative of the proposed endeavor's national importance under the first prong.

Second, in *Dhanasar*, we noted that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* at 889. While we agree *Dhanasar* does not require a petitioner to show how a proposed endeavor's methodology or process differs from or improves upon those already available in the United States, this information is, nevertheless, relevant to the question of whether an undertaking would have national or even global implications within the field to support its national importance.

Here, although the Petitioner claims he introduced improved manufacturing processes to the Brazilian pharmaceutical industry, he has provided little evidence to show any broader implications to the field. He has not demonstrated, for example, specific data demonstrating his processes' effects on the drug manufacturing field, evidence of widespread adoption in the industry, or evidence that the Petitioner's processes were, in fact, different from or better than those already available in the United States at the time. Additionally, we note that the record is unclear as to whether the Petitioner created these processes or simply introduced existing technologies to his company. The evidence also appears to indicate that the Petitioner's improved processes were implemented approximately in the 2008 to 2010 timeframe, over a decade ago. Although the Petitioner contends that "[i]t is this capacity and capability to innovate improved manufacturing processes that [the Petitioner] intends to offer to the United States," the record contains little evidence demonstrating the Petitioner has made any innovations or notable process improvements since that time. Based on the evidence in the record, we agree with the Director that the Petitioner did not adequately corroborate his claim that his proposed endeavor will have national or even global implications within his field or industry.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. Because the Petitioner has not established through sufficient evidence in the record that his proposed endeavor meets the first prong of the *Dhanasar* framework, he has not demonstrated eligibility for a national interest waiver. Since the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining issues concerning whether he has established eligibility under the remaining two *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We, therefore, conclude that the Petitioner has not established that he is eligible for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.